Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

October Term, 1998

FRED DuVALL,

Petitioner,

v.

STATE OF ARKANSAS,

Respondent.

On Petition For Writ Of Certiorari To The Circuit Court For The Twentieth Judicial District, Division 3, Van Buren County, Clinton, Arkansas

SUPPLEMENTAL APPENDIX

FRED DuVALL, *Petitioner – pro se*
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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FRED DuVALL, pro se PLAINTIFF

v. Civil No. LR-C-97-856

MIKE BRIDGES, in his individual capacity and as Sheriff of Van Buren County, Arkansas; STEPHEN JAMES, in his individual capacity and as Deputy prosecuting Attorney for Van Buren County, Arkansas; COUNTY OF VAN BUREN, ARKANSAS; LARRY E. KUYKENDALL d/b/a KUYKENDALL CEMENT CO.; and STATE OF ARKANSAS DEFENDANTS

ORDER

(Filed May 27, 1998)

Plaintiff filed this lawsuit, which was assigned to Chief Judge Reasoner, on October 9th "for redress of a denial in the Arkansas courts of a remedy for violations of 42 U.S.C. § 1983, a denial of the supremacy of federal laws, and a denial of enforcement of concurrent state jurisdiction for the implementation of those laws." He had previously filed suit in the Van Buren County Circuit Court on April 25, 1997, against Bridges and James alleging that their refusal to arrest or issue a warrant for Kuykendall, who plaintiff caught trying to steal the aeration pump off his sewer system, violated the 4th, 5th, 7th, 11th and 14th Amendments to the United States Constitution for which he sought damages and a writ of mandamus for Kuykendall's arrest. He also named as defendants Kuykendall and the County. The exhibits to the complaint revealed that Kuykendall is the co-owner

of the company that had sold plaintiff the pump on which plaintiff had stopped payment on the check for that purchase. Plaintiff filed a petition for removal on July 16th alleging federal question jurisdiction under § 1983 and RICO and complaining that the circuit court on July 2nd had granted motions to dismiss filed by the Attorney General's (AG) office on the grounds that Bridges, James and the County were immune from suit. By order filed on August 11th in *DuVall v. Bridges,* LR-C-97-592, this Court granted James' motion to remand that case to the Van Buren County Circuit Court since plaintiff was not empowered under 28 U.S.C. § 1441(a) to remove those proceedings from state court.

This current complaint recounts the prior filing in the circuit court; the July 2nd hearing in the circuit court; plaintiff's July 15th petition for removal; the circuit court's August 4th order dismissing Bridges, James and the County as absolutely immune although the case was in federal court; the August 11th remand; his August 25th appeal to the Arkansas Supreme Court of the August 4th order; and the October 1st decision by the Arkansas Court of appeals "upholding" the circuit court. Plaintiff alleges that the vacating – after discussion between Bridges and James – of plaintiff's citizen arrest of Kuykendall deprive him of equal treatment and his property interest in the prisoner. Besides damages, plaintiff in this Court seeks the vacating of the circuit court's order of immunity, injunctive relief, and a declaratory judgment finding Section 20 of Article 5 of the Arkansas Constitution and Ark. Code Ann. § 19-10-305 as to immunity to be unconstitutional.

On October 29th, Bridges and the County filed a motion to dismiss on the grounds that plaintiff's claims are barred by the *Rooker-Feldman* doctrine as well as res judicata and collateral estoppel. Plaintiff responded on November 4th. On November 5th, James and the State filed a motion to dismiss invoking the *Rooker-Feldman* doctrine, failure to state a cause of action against both the State and James, sovereign immunity as to the State and James in his official capacity, and qualified immunity as to James in his individual capacity. Plaintiff responded on November 13th.

On December 5th, plaintiff filed a motion to disqualify the AG from representing more than one party as a conflict of interest. Bridges and the County responded on December 12th that there was no such conflict and that plaintiff would not have standing to raise that issue. The State and James also filed a response to the motion to disqualify on December 12th.

Plaintiff filed a motion for declaratory judgment on December 18th regarding the constitutionality of the Arkansas provisions. On December 19th, plaintiff filed a supplemental motion to disqualify counsel. Bridges and the County filed a response to the declaratory judgment motion on December 22nd. Plaintiff next filed a motion to consolidate the state action against Kuykendall with this case on December 29th and a motion for scheduling order and judgment as a matter of law. The State and James filed a response to the supplemental motion to disqualify on December 31st as well as response to the motion for declaratory judgment. They filed their response to the motion to consolidate on January 7th and their response

to the motion for scheduling order and judgment as matter of law on January 8th. Bridges and the County filed their responses to the motions for judgment and consolidation on January 8th.

By order filed on January 9th, plaintiff was directed to not file any additional motions until the Court had ruled on the motions to dismiss. On February 3rd, plaintiff filed a demand for jury trial and response to challenge to jurisdiction. The case was transferred to the undersigned's docket by Judge Reasoner on May 21st as a refiling of the related LR-C-97-592 case.

The *Rooker-Feldman* doctrine was summarized by the Eighth Circuit Court of Appeals in *Neal v. Wilson*, 112 F.3d 351, 356 (8th Cir. 1997) as follows:

> The *Rooker-Feldman* doctrine states that district courts do not have subject matter jurisdiction over challenges to state court decisions in judicial proceedings. The only court with jurisdiction to review decisions of state courts is the United Stats Supreme Court. A federal district court has jurisdiction over general constitutional challenges if these claims are not inextricably intertwined with the claims asserted in state court. A claim is inextricably intertwined if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. In other words, *Rooker-Feldman* precludes a federal action if the relief requested in the federal action would effectively reverse the state court decision or void its ruling. [citations omitted]

The record currently before the Court reflects that the appeal from the August 1997 written ruling of the circuit

court setting out the July 2, 1997 oral ruling was dismissed by the Arkansas Court of Appeals as not being a final order required for appellate jurisdiction since the original case is still pending in the circuit court. Defendants have correctly argued the effect of the *Rooker-Feldman* doctrine under these circumstances. Even plaintiff's motion to consolidate illustrates how the state and federal claims are inextricably intertwined. Thus, subject matter jurisdiction is lacking and dismissal is appropriate.

Accordingly, the October 29th (#3) and November 5th (#7) motions to dismiss are granted. The remaining motions (#13, #21, #23, #27 and #29) are thereby rendered moot.

IT IS SO ORDERED this 27th day of May, 1998.

/s/ George Howard, Jr.
UNITED STATES
DISTRICT JUDGE

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